



This document is scheduled to be published in the Federal Register on 11/14/2014 and available online at <http://federalregister.gov/a/2014-26954>, and on FDsys.gov

DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO93

Technical Corrections to Medical Regulations Based on Veterans' Health Care Eligibility Reform Act of 1996

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations by making technical corrections to conform to the Veterans' Health Care Eligibility Reform Act of 1996 (Act of 1996). Currently VA regulations read that veterans receive only VA hospital care to treat medical conditions of eligible veterans. We are amending our regulation to clarify that VA provides hospital care and medical services to eligible veterans.

DATES: This final rule is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461-1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

The Veterans' Health Care Eligibility Reform Act of 1996 (Act of 1996) significantly changed the provision of care to eligible veterans by establishing an enrollment system of care that gives priority for VA medical care to veterans whose disabilities are connected to military service. Section 101, Public Law 104-262, 103 Stat. 3177. The general enrollment regulations are set forth in 38 CFR 17.36 through 17.38, which are not being amended by this rulemaking. The Act of 1996 clarified that not only does VA provide hospital care, but VA also provides medical services to eligible veterans. Section 1701 of 38 U.S.C. defines the term medical services, which include, among other things, medical examinations, treatment, and rehabilitative services. Since VA has been providing hospital care and medical services to eligible veterans as required by the Act of 1996, VA is updating § 17.47 accordingly. Current § 17.47 refers only to VA's provision of hospital care to eligible veterans when, in fact, VA provides hospital care and medical services to such veterans.

The title of § 17.47 is amended to reflect the scope of the section. The title of the section is changed from "Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care" to read "Considerations applicable in determining eligibility for hospital care, medical services, nursing home care or domiciliary care."

We are editing § 17.47 to add the term "medical services" where appropriate. For example, the first sentence of paragraph (a)(1) reads, "For applicants discharged or released for disability incurred or aggravated in line of duty and who are not in receipt of compensation for service-connected or service-aggravated disability, the official records of the Armed Forces relative to findings of line of duty for its purposes will be accepted

in determining eligibility for hospital care.” We are amending this sentence by adding “or medical services” immediately after “hospital care”. Because VA does not limit its services to hospital care only, the addition reflects the types of care available to veterans. The other amendments in paragraph (a)(1) and in paragraphs (a)(2), (c), (d)(1), (d)(2), (f), (g)(1) and (g)(2) are made for the same purpose.

For this same reason, we are replacing the term “admission” in paragraph (a)(1) with the term “such care or services”. The term “admission” is too narrow, as it applies only to hospital admission and not outpatient medical services. We are also replacing the term “hospitalization” in paragraph (a)(1) with “hospital care or medical services”. We are making similar edits in paragraph (a)(2).

We are making a technical edit to § 17.47(j) by correcting the spelling of “cytomegalovirus.”

Administrative Procedure Act

The Secretary of Veterans Affairs (Secretary) finds good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. This amendment merely revises VA’s regulation to comply with a statutory mandate that VA provide hospital care and medical services to eligible veterans. Therefore, a prior opportunity for notice and comment is unnecessary. Additionally, for the reason previously stated, the Secretary finds good cause to dispense with the delayed-effective-date requirement of 5 U.S.C. 553(d).

Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary rules or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www1.va.gov/orpm/>, by following the link for VA Regulations Published from FY 2004 through FYTD.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of

Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on November 6, 2014, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse; Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Philippines, Veterans.

Dated: November 10, 2014

Janet Coleman
Chief, Regulations Development, Tracking, and Control,
Office of Regulation Policy & Management,
Office of the General Counsel,
U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.47 [Amended]

2. Amend § 17.47 by:

a. Removing from the section heading “hospital, nursing home or domiciliary care” and adding in its place “hospital care, medical services, nursing home care, or domiciliary care”.

- b. In paragraph (a)(1) by:
 - i. Removing all references to “hospital care” and adding in each place “hospital care or medical services”;
 - ii. Removing “admission,” and adding in its place “such care or services,”; and
 - iii. Removing “hospitalization,” and adding in its place “hospital care or medical services,”.
- c. In paragraph (a)(2), by removing “admission of the applicant for hospital care,” and adding in its place “hospital care or medical services,”.
- d. In paragraph (c), removing all references to “hospital care” and adding in each place “hospital care or medical services”.
- e. In paragraphs (d)(1) introductory text and (d)(2), removing all references to “hospital or nursing home care” and adding in each place “hospital care, medical services, or nursing home care”.
- f. In paragraph (f), removing “hospital, nursing home, or outpatient care under 38 U.S.C. 1710(a)(3) by virtue of the veteran's eligibility for hospital care” and adding in its place “hospital care, medical services, nursing home care, or outpatient care under 38 U.S.C. 1710(a)(3) by virtue of the veteran’s eligibility for hospital care and medical services ”.
- g. In the first sentences of paragraphs (g)(1) and (2), adding “and/or receiving medical services” immediately following “hospitalized”.
- h. In paragraph (j), removing “cytemegalovirus” and adding in its place “cytomegalovirus”.

[FR Doc. 2014-26954 Filed 11/13/2014 at 8:45 am; Publication Date: 11/14/2014]